Supreme Court, U.S.
FILED
001763 MAR 28 2001
OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

JEFFREY D. REUTZEL ----------PETITIONER

VS.

SUPER FRESH FOOD MARKETS ---------RESPONDENTS

On Petition For Writ Of Certiorari
To the Pa. Workman's Compensation Appeal Board

PETITION FOR WRIT OF CERTIORARI

Jeffrey D. Reutzel
3505 Bartram Road
Willow Grove Pa. 19090
(215) 657-1382

Questions Presented for Review

It is the policy of the Pa. W.C. Act. : For the adjudicating Workmans' Compensation Judge to award to Claimant all due relief entitled to. And that "He", the Judge, will conduct a fair and impartial hearing and maintain order.

These questions arise pertaining to the December 2, 1998 hearing.

1. Why was Claimant not awarded all relief at the December 2, 1998 hearing by the adjudicating Workmans' Compensation Judge? Did Judge John Liddy error in asking, the **Defendant Counsel**, if Claimant was submitting a statement as to costs of litigation including legal fees? Or, did the judge error in allowing the **Defendant** to answer for Claimant? Is there evidence that Defendants' counsel was enthusiastic? And did this enthusiasm inflict monetary damage on Reutzel?
Was Claimants' Constitutional Rights violated?

W.C.A.B. Judge Herbert Hoffman states in his opinion of December 21,1999 that;

"For whatever reason, it appears that Claimants' Counsel was not given the opportunity to fully state whether or not Claimant would be submitting a statement as to litigation costs".

If Claimant is denied the opportunity to ask for Costs of Litigation, including legal fees, before the record is closed. How then can Claimant be awarded Litigation Costs, after the record is closed, and denied the opportunity to ask for legal fees after the record is closed?
2. Can the W.C.A.B. award Costs of Litigation, including legal fees, under Section 440 of the Pa. W.C. Act., after the record is closed?

List Of Parties

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

Petitioner: Jeffrey D. Reutzel - Claimant
3503 Bartram Rd.
Willow Grove, Pa. 19090

VS.

Workman's Compensation Appeal Board
Commonwealth of Pennsylvania
Department of Labor and Industry
901 North 7th Street, 3rd Floor-South
Harrisburg, Pa. 17102

- WCAB Commissioner Herbert Hoffman

Opinion Date: 12-21-99 Affirmed in Part
Remanded in Part

WCAB Agency Docket Number **A98-5017**

Super Fresh Food Markets - Defendant
2nd St. Pike
Richboro Pa. 18954

Deborah Rocco, Esquire - Defendant Counsel
of: Weber, Goldstein, Greenberg,
and Gallagher LLP.
1811 Chestnut Street-The Belgravia
Philadelphia Pa. 19103

Crawford and Company - Insurance Carrier
600 Reed Road
Broomall, Pa. 19008

Table of Content

	Page
Questions Presented	i
List of Parties	ii
Table of Content	iii
Index to Appendicies	iv
Opinions Below	v
Jurisdiction	v
To Your Honorable Judge	1
Constitutional and Statutory Provisions Involved	2
Text of Order being Appealed	2
Verbatim & Texts	3
Summary of Events & Proceedings	5
Statement of the case	7
Reasons for Granting the Writ	9
Conclusion	12

Index to Appendicies

Appendix A - Decision of Commonwealth Court of Pa. July 13, 2000 – Senior Judge Samuel Rodgers. **Petition for Review is Dismissed.** Including the August 2, 2000 Clarification of the Order. Docket Number 495-CD–2000.

Appendix B - Decision of Pa. Workers' Compensation Appeal Board - December 21, 1999, WCAB Judge Herbert Hoffman. **Appeal Remanded in Part** and **Affirmed in Part.** Docket Number A98 – 5017.

Appendix C - Decision of Supreme Court of Pennsylvania December 28, 2000 - Appellate Court Clerk, Shirley Phipps. **Denying, Petition for Allowance of Appeal.** Docket Number 609–MD–2000.

Appendix D - Decision of Pa. Bureau of Workers' Compensation Judge John Liddy, (WCJ). **Petitions are marked Withdrawn.** Date of circulation; December 8, 1998. Petition decision can be found at Bureau Claim Number 900728.

In The
Supreme Court of the United States
Petition for Writ of Certiorari

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

Opinions Below

The opinion of the highest state court to review the merits appears at **"Appendix B"** to the petition and is reported at **Docket No. A98 – 5017**

The opinion of the Pennsylvania Workmans' Compensation Appeal Board Court appears at **" Appendix B"** to the petition and is reported at **Docket No. A98 – 5017**.

JURISDICTION

The date on which the highest state court decided my case was **December 28, 2000.** A copy of that decision appears at **"Appendix C ".**

A timely petition for rehearing was thereafter denied on the following date: **December 28, 2000**, and a copy of the order denying rehearing appears at **"Appendix C ".**

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a)

Docket No.

To Your Honorable Judge

This Petition for Writ of Certiorari of Appeal Petition, is for Jeffrey D. Reutzel, (petitioner), to be reimbursed for legal fees incurred in connection of Super Fresh Food Markets', (respondent), Modification/Suspension Petition, filed with the Commonwealth of Pennsylvania, Department of Labor and Industry, Bureau of Workers' Compensation, at1171 South Cameron Street, Room 103, Harrisburg Pa. 17104, in June 1996.

And have only the "affirmed part", of the order, of W.C.A.B. Judge Herbert Hoffman overturned. (Appendix B) **That Specifically Exclude Counsel Fees.**

Constitutional and Statutory Provisions Involved

Text of the Order being Appealed

W.C.A.B. Judge Herbert Hoffman (opinion mailing date 12-21-99) Appendix B (page 4) states the following;

"Our Commonwealth Court has held that a Claimant must make a specific request for an allowance of counsel fees for unreasonable contest, and that the WCJ may not award Counsel fees sua sponte." Mediq, Inc. v. W.C.A.B. (Steskal), 633 A 2d 651 (Pa. Commonwealth 1993 ; Daugherty v. W.C.A.B. (JONES & LAUGHLIN STEEL CORP.), 510 A 2D 147 (Pa. Commonwealth 1986).

"A review of the record indicates that the Defendant is correct that the Claimant did not make a request for the attorneys' fees during the pendency of the proceedings. As a result, we see no error in the failure of the W.C.J. to award counsel fees."

Verbatim & Texts

When a petitioner (Super Fresh) withdraws their petition, then the Claimant is to be awarded all relief under the Pa. W.C.Act., by the adjudicating Workmans' Compensation Judge.

Under the Pa. Workman's Compensation Act, (77 P.S. § 996) Section 440(a) : In any contested case where the insurer has contested liability in whole or in part, including contested cases involving petitions to terminate, reinstate, increase, reduce or otherwise modify compensation awards, agreements or other payment arrangements or to set aside final receipts, the employee or his dependent, as the case may be, in whose favor the matter at issue has been finally determined in hole or in part shall be awarded, in addition to the award for compensation, a reasonable sum for costs incurred for attorney's fee, witnesses, necessary medical examination, and the value of unreimursed lost time to attend the proceedings: Provided, That cost for attorney fees may be excluded when a reasonable basis for the contest has been established by the employer or the insurer.

Workmans' Compensation Appeal Board (hereinafter W.C.A.B.), Judge Herbert Hoffman, issues his opinion, on mailing date December 21, 1999, Appendix B, (page 4).

In W.C.A.B. Judge Herbert Hoffmans' opinion states the following;

"Regarding the Claimants' request for litigation costs, our review of the record indicates that Claimant is correct in arguing that he was not given an opportunity to submit a statement as to litigation costs. For whatever reason, it appears that Claimants' Counsel **was not given the opportunity** to fully state whether or not the Claimant would be submitting a statement as to litigation costs." (See notes of Testimony, 12-2-98, p. 4).

The rules and regulations of the General Hearing Procedure covered by the Special Rules of Administrative Practice Procedure Before Referees 34 PA. Code, Chapter 131, Pennsylvania Bulletin, March 30, 1991, include the following.

§ 131.54 (a) The referee or Workmans' Compensation Judge, will conduct a fair and impartial hearing and maintain order.

§ 131.55 Attorney Fees and Costs, under Section 440 of the Pennsylvania Workers' Compensation Act (77 P.S. § 996) (hereinafter Pa.W.C. Act.) **will be awarded.**

In Senior Judge Samuel Rodgers order of July 13, 2000 states; Now, July 13, 2000, upon consideration of the Workers' Compensation Appeal Boards' opinion and order in this matter, and it appearing that the Workers' Compensation Appeal Boards' order affirmed in part and remanded "to the Workers' Compensation Judge for additional findings **limited** to the amount of litigation costs..." and it further appearing that said order is not a final, appealable order or an appealable interlocutory order, Pa. R.A.P. 311 (f), the petition for review is **dismissed,** Appendix A.

Summary of Events

A summary of the events of December 2, 1998 follows.

Judge John Liddy announces, "The next matter is a Modification and Suspension, Jeffrey Reutzel."

Jeffrey Reutzel (hereinafter Reutzel) approaches the Judge pulpit, as do Deborah Rocco (hereinafter Rocco) and **another** female (hereinafter Female Two)

Rocco stands between Reutzel and Female Two.

By the transcript, Rocco and Female Two said, "Good morning Your Honor".

Female Two did not speak during the rest of the hearing.

Judge John Liddy conversed with Rocco and not with Female Two.

Tom O'Brien was **not** in attendance.

Transcript of Proceedings

Judge Liddy: "The next matter is a Modification/Suspension , Jeffrey D. Reutzel".

Ms. Melcher: "Good morning, Your Honor".

Ms. Rocco: "Good morning, Your Honor. Your Honor, we're just withdrawing our Petition. We originally couldn't reach a resolution".

Judge Liddy: "And you're withdrawing the Modification and Suspensation Petitions"?

Ms. Rocco: "That's correct. We had continued it hoping that at sometime we could resolve this".

Judge Liddy: "Thank you. Do you understand that"?

Mr. Reutzel: "I didn't catch any of it, Your Honor".

Judge Liddy: The Defendant is withdrawing their petitions, for Modification and Suspension, Mr. Reutzel. That they agree that this point, you're totally disabled; that

you weren't able to resolve it for a C & R and they're withdrawing their petitions; do you understand that"?

Mr. Reutzel: "So it's withdrawn? Does that mean anything"?

Judge Liddy: "Yes. You continue to get your compensation as you have in the past, as you are receiving that".

Ms. Rocco: "Thank you, Your Honor".

Judge Liddy: "Your attorney will explain it to you".

Ms. Rocco: "Thank you, Your Honor".

Judge Liddy: "And in the Order should I put down payment of the litigation costs"?

Ms. Rocco: "I don't believe there were any, but I'm sure that -------"

Judge Liddy: "Okay, I'll mark it withdrawn".

Ms.Rocco: "Thank you, Your Honor".

Judge Liddy: "Thank you".

(Whereupon, at 9:04 a. m., the hearing was concluded.).

Judge John Liddy issued a decision to mark the Modification/Suspension Petition, **withdrawn**. Circulation Date 12-8-98. (Appendix D)

Statement of the Case

Allowance of Appeal Petition of Writ of Certiorari

When a petitioner (Super Fresh) withdraws their petition, then the Claimant is to be awarded all relief under the Pa. W.C.Act., by the adjudicating Workmans' Compensation Judge.
Reutzel appealed to The W.C.A.B. for Costs of Litigation Relief.
The Final order of W.C.A.B. Judge Herbert Hoffman remanded in part and affirmed in part **the decision of** W.C.J. John Liddys' order.

Since Reutzel did not agree, with W.C.A.B. Judge Herbert Hoffman, that part of W.C.J. John Liddys' order should be **affirmed**, The Appeal in Commonwealth Court of Pa. Ensued.

Reutzel seeks the cost of litigation **legal fees** related to the petition for Modification / Suspension filed by Super Fresh. Reutzel needed no legal counsel, and none was retained before the petition was filed against Reutzel. The cost of legal fees is related and cause of the petition filed against Reutzel in June 26, 1996.

No witness testimony, no medical testimony, no expert testimony of any kind was presented by Reutzel to force or suggest to Super Fresh to drop the petition against Reutzel. **The only exhibits presented by Reutzel were the two fee agreements, nothing else.** Reutzel deserves the legal fees and is entitled under the law of the Pa. Workers Compensation Act. (Act) Act June 2, 1915, and as amended. Reutzel did what was required in Compliance to Appellate Court Procedure.

If Reutzel does not appeal to Appellate Court of Commonwealth Court of Pa, to whom does he, to question the decision of W.C.A.B. Judge Herbert Hoffman? (Appeal Board).

Where can relief be sought?

Reutzel was **denied the opportunity** to ask for costs of litigation including attorney fees.

The W.C.A.B. agrees Claimant is entitled to litigation costs Sua sponte.

The W.C.A.B. had awarded Reutzel Costs of Litigation after the record was closed.

Under section 440. of the Pa. W.C. Act, costs of litigation including attorney fees, can be awarded after the record is closed. Rocco withdrew their petition. The reasonable basis for the contest had not been established. For the Defendant to withdraw without evidence being presented, against the petition, establishes that the Defendant had never proved a reasonable basis for contest and Claimant should have been granted an opportunity to state whether or not Claimant would be submitting a statement as to litigation costs, or awarded costs including legal fees sua sponte.

Reasons for Granting the Writ

Argument

W.C.A.B. Judge Herbert Hoffman states in his opinion of 12-21-99,

"For whatever reason, it appears that Claimants' Counsel was not given the opportunity to fully state whether or not the Claimant would be submitting a statement as to litigation costs".

W.C.A.B. Commissioner Herbert Hoffman agrees with the Claimant argument.

However, the costs of litigation excluding attorneys' fees were awarded.

Litigation costs were awarded **after** the December 2nd 1998 hearing, and **after** the record was closed. "Claimants' Counsel was **not** given the opportunity". **These words ring loud.** Reutzel is entitled to submit a statement to litigation costs, including attorney fees, under the Pa. W.C. Act.

Things don't just happen. Super Fresh Food Markets Counsel, Rocco, successfully circumvented Reutzels' relief, by contempt, in Judge John Liddys' Court. Rocco used hostile stratagem, overreaching by her will, to take control of Judge John Liddys' Court. Rocco answered questions that should **only** be answered by Reutzel or Reutzels' Counsel. Rocco was enthusiastic to answer for Reutzel. Also, by making the statements that are entered in the record on Reutzels' behalf, Rocco instigated the finalism of the December 2, 1999 hearing, as evidence in the transcript.

There is evidence, Defendant indulged in unreasonable conduct.

"I don't **believe** there were any, but I'm sure that.....". Here, Rocco promotes the hearing finale. Rocco instigated confusion. Rocco circumvented the "final cause" of the hearing using confusion.

As if to prompt the finale of the hearing on December 2, 1998, Debroah Rocco states, "Thank You, Your Honor" **Three Times.**

Circumventing the "final cause" of the hearing worked to deprive, To Defraud, Claimant of his Constitutional rights.

In the Defendants brief, in support of an Order Dismissing Appelants' Appeal, A98 – 5017, submitted by Rocco on May 13, 1999; (Page 1, in the introduction) Rocco declares, "As such, neither the Judge or this Board is permitted sua sponte to order payment of fees". Rocco declares Reutzels' relief was annulled and canceled. Rocco declared Reutzels' relief circumduce, that Reutzels' request for attorney fees was untimely.

In Defendants' Petition for Review in Commonwealth Court No. 2787-CD-2000 dated December 11, 2000, (Page 2, #5 :f), Defendants' Counsel states,

"In order to avoid an unreasonable constest and the potential imposition of attorneys' fees, Super Fresh withdrew its Petition to Modify Compensation Benefits" (see N.T. 12-2-98)

Defendants' Counsel is admitting to unreasonable contest, of their Modification/Suspension Petition, Dated June 26, 1996.

In Defendants' Application for Supercedeas Pending Resolution of Petition for Review in the Commonwealth Court #2787-CD-2000, Defendant states the same. (Page 2 #7).

Argument 2

If Judge John Liddy purposly asked Defendant Counsel "And in the order should I put down payment of litigation costs?" The purpose of the Pa. W.C. Act would be circumvented.

After Rocco responded, "I don't believe there were any, but I'm sure that.....",

Judge John Liddy accepted this answer. Judge John Liddy responded "Okay I'll mark it withdrawn".

If the "final cause" of this hearing, was to hold the hearing and deprive Claimant of relief, then, Claimants' Constitutional Rights were definitely violated.

The **"final cause"** of the December 2, 1998 hearing, should have been to award Claimant all due relief and move to finalize the petition withdrawal.

Conclusion

Allowance of Appeal Petition of Writ of Certiorari

The W.C.A.B. awarded Reutzel, Costs of Litigation, **after the record was closed.**

The W.C.A.B. **awarded**, Reutzel, Costs of Litigation in **compliance** with the Rules and Regulations of General Hearings Procedure covered by the Special Rules of Administrative Practice Procedure Before Referees 34 PA. Code, Chapter 131, Pennsylvania Bulletin, March 30, 1991, per §131.55 to comply with section 440 of the Pa. W.C. Act.

Therefore the following logic and law can be applied in this specific suit.

Reutzel **was denied the opportunity** to fully state whether or not he would be submitting a statement as to costs to litigation **including attorney fees.**

Claimant was denied fair treatment and relief entitled to by the Pa. W.C.Act.

If Reutzel was denied the opportunity to ask for Costs of Litigation, including legal fees, before the record is closed. And Reutzel is awarded litigation costs, on appeal, after the record is closed, Reutzel is entitled the opportunity to request attorneys fees after the record is closed.

And said request is not untimely.

Claimant is **entitled the opportunity** to state whether or not he (Claimant) would be submitting a statement as to litigation costs **including attorney fees.**

The W.C.A.B. of Pennsylvania can award attorney fees, after the record is closed.

Thank You, Respectfully Submitted,

Jeffrey D. Reutzel

Jeffrey D. Reutzel
3505 Bartram Rd.
Willow Grove, Pa. 19090
(215) 657-138

5-18-2001

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jeffrey D. Reutzel, Petitioner	:	
v.	:	
Workers' Compensation Appeal Board (Super Fresh Food Markets), Respondent	:	
	:	No. 495 C.D. 2000

ORDER

NOW, July 13, 2000, upon consideration of the Workers' Compensation Appeal Board's opinion and order in this matter, and it appearing that the Workers' Compensation Appeal Board's order affirmed in part and remanded "to the Workers' Compensation Judge for additional finding limited to the amount of litigagion costs...." and it further appearing that said order is not a final, appealable order or an appealable interlocutory order, Pa. R.A.P. 311(f), the petition for review is dismissed.

This Court having been advised by petitioner's counsel that portions of the record in the above captioned matter are missing, and having been further advised by the Workers' Compensation Appeal Board that the missing items were certified to the Court, and it appearing that there is no evidence of receipt of said items, counsel are hereby ordered to file a stipulation with the Workers' Compensation Appeal Board including the missing record items which are transcripts of hearings from the following dates: August 28, 1996; January 22, 1997; January 25, 1997; September 17, 1997;

"Appendix A"

January 7, 1998; May 6, 1998; September 9, 1998; December 28, 1998, within thirty (30) days of the date of this order.

The Chief Clerk shall mail a copy of the order to counsel of record and to the Secretary of the Workers' Compensation Appeal Board.

BY THE COURT:

"s/Samuel J. Rodgers"
Senior Judge

Certified from the Record
July 14, 2000
and Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jeffrey D. Reutzel, Petitioner	:	
v.	:	
Workers' Compensation Appeal Board (Super Fresh Food Markets),	:	
Respondent	:	No. 495 C.D. 2000

PER CURIAM **ORDER**

NOW, August 2, 2000, upon consideration of petitioner's motion for clarification of order and for additional 30-day extension, the motion is granted and the first line in the second paragraph of this Court's order of July 13, 2000 shall read: "This Court having been advised by **respondent's** counsel that....."

The parties shall file a stipulation as set forth in the order of July 13, 2000 on or before September 1, 2000.

Certified from the Record
August 3, 2000
and Order Exit

Commonwealth of Pennsylvania
Department of Labor and Industry
Workers' Compensation Appeal Board
901 N. 7th Street, 3rd Floor South
Harrisburg, Pa. 17102

Opinion Mailing Date: 12/21/99

A98 - 5017

Jeffrey D. Reutzel, **Claimant**
3505 Bartram Road
Willow Grove, Pa. 19090

Affirmed In Part
Remanded In Part

Super Fresh Food Markets, **Defendant**
2nd Street Pike
Richboro, Pa. 18954

Crawford & Company
600 Reed Road
Broomall, Pa. 19008

Deborah A. Rocco, Esquire
1811 Chestnut Street
The Belgravia
Philadelphia, Pa.19103

" Appendix B"

Commonwealth of Pennsylvania
Workers' Compensation Appeal Board
Harrisburg

A98 – 5017

Jeffrey D. Reutzel 3505 Bartram Road Willow Grove, Pa. 19090	: Appeal by Claimant : From Order of
Vs.	: W.C. Judge Liddy
Super Fresh Food Markets 2nd Street Pike Richboro, Pa. 18954	: S.S. # 202-40-9053 : Philadelphia
	: March 1999

Affirmed In Part
Remanded In Part

Crawford & Company 600 Reed Road P.O. Box 387 Broomall Pa. 19008	: Insurance Carrier
	: Claimant's Counsel
Deborah A. Rocco, Esquire 1811 Chestnut Street The Belgravia Philadelphia, Pa. 19103	: Defendant's Counsel

OPINION

Hoffman, Commissioner:

This matter is before the Workers' Compensation Appeal Board ("Board") on the Appeal of Claimant from the Decision and Order of Workers' Compensation Judge ("WCJ") John W. Liddy which granted the Defendant's request to withdraw its Modification and Suspension Petitions.

Review of the record indicates that Claimant, Jeffrey D. Reutzel, sustained an injury on January 18, 1994, while in the course and scope of his employment with Defendant, Super Fresh Food Markets. A Notice of Compensation Payable dated February 24, 1994, describes the injury as, "herniated disc L-5, S-1." The Claimant was entitled to compensation at the rate of $493.00 per week based on an average weekly wage of $636.25. On July 1, 1996, Defendant filed a Petition to Modify and/or Suspend Compensation Benefits alleging that as of August 9, 1995, the Claimant was referred to positions within his medical restrictions, but that the Claimant failed to follow through with the job referrals in good faith. Claimant filed a responsive Answer denying the allegations of the Petition.

In the course of the proceedings, Defendant requested that the Petitions be withdrawn. By Decision and Order dated December 8, 1998, the Petitions were marked, "withdrawn." The appeal followed.

Claimant argues on appeal that the WCJ erred in failing to award to the Claimant litigation costs and attorney's fees. For the reasons set forth below, the Decision of the WCJ is affirmed in part and remanded in part.

The Board's function is primarily appellate in nature. Bethenergy Mines, Inc. v. W.C.A.B. (Skirpan), 612 A.2d 434 (Pa. 1992). In cases where the Board has taken no additional testimony, the Board is required to accept the facts as found by the WCJ if they are supported by competent evidence. Bethenergy Mines, supra. The proper scope of inquiry is not whether, upon a review of all of the evidence, the Decision

reached by a WCJ appears to have been the most reasonable and probable one that could have been reached. Rather, review is limited to a determination of whether the record contains substantial evidence which supports the WCJ's findings. Bethenergy Mines, supra. Substantial evidence is such relevant evidence which a reasonable mind might accept as adequate to support a finding. York Terrace/Beverly Enterprises v. W.C.A.B., 591 A.2d 762 (Pa. Cmwlth. 1992).

In workers' compensation proceedings, it is the function of the WCJ to weigh the evidence and resolve conflicting testimony. Alpo Petfoods, Inc. v. W.C.A.B. (Neff), 663 A.2d 293 (Pa. Cmwlth. 1995); Buczynski v. W.C.A.B. (Richardson-Vicks, Inc.), 576 A.2d 421 (Pa. Cmwlth. 1990). The WCJ is free to accept or reject, in whole or in part, the testimony of any witness, including medical witness. Greenwich Collieries v. W.C.A.B. (Buck),. 664 A.2d 703 (Pa. Cmwlth. 1995).

As indicated above, Claimant argues on appeal that the WCJ erred in failing to award the Claimant litigation costs and attorney's fees. In response, Defendant argues that the Claimant is not entitled to attorney's fees because no request for the same was made during the pendency of the proceedings. Our Commonwealth Court has held that a claimant must make a specific request for an allowance of counsel fees for unreasonable contest, and that the WCJ may not award counsel fees sua sponte. Mediq, Inc. v. W.C.A.B. (Steskal), 633 A.2d 651 (Pa. Cmwlth. 1993); Daugherty v. W.C.A.B. (Jones & Laughlin Steel Corp., 510 A.2d 147 (Pa. Cmwlth. 1986). A review of the record indicates that the Defendant is correct that the Claimant did not make a request for attorney's fees during the pendency of the proceedings. As a result, we see no error in the failure of the WCJ to award counsel fees. Regarding the Claimant's request for litigation costs, our review of the record indicates that Claimant is correct in arguing that he was not given an opportunity to submit a statement as to litigation costs. For whatever reason, it appears that Claimant's counsel was not given the opportunity to fully state whether or not the

Claimant would be submitting a statement as to litigation costs. (See, Notes of Testimony, 12/2/98, p. 4). If a claimant is successful in whole or in part in a litigation claim, reasonable costs must be awarded to the claimant. Boeing Vertol Co. v. W.C.A.B. (Coles), 528 A.2d 1020 (Pa. Cmwlth. 1987); Section 440 of the Act, 77 P.S. § 996. As a result, the matter must be remanded to the WCJ for

Page 5

additional findings limited to the amount of litigation costs to be reimbursed to the Claimant.

Accordingly, we:

Page 6

ORDER

The Decision and Order of Workers' Compensation Judge John W. Liddy circulated December 8, 1998, is **Affirmed in part and Remanded in part**. The matter is remanded to the WCJ for additional findings limited to the amount of litigation costs to be reimbursed to the Claimant.

In all other respects, the Decision and Order is Affirmed.

BY THE BOARD:
"s/Herbert Hoffman".
HOFFMAN, COMMISSIONER
DEC 21, 1999

Concurred in by:
"s/Robert Mc Intyre"
Commissioner
"s/William J. Atkinson"
Commissioner
"s/Joseph Santone"
Commissioner
"s/Daniel Fleck"
Commissioner
"s/Harold Fergus"
Commissioner

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JEFFREY D. REUTZEL,	**: No. 609 M.D. Alloc. Dkt 2000**
Petitioner	: Petition for Allowance of : Appeal from Commonwealth
v.	: Court
Workers' Compensation Appeal Board (Super Fresh Food Markets)	: : : : :
Respondents	

ORDER

PER CURIAM

AND NOW, this 28th day of December, 2000, the petition for allowance of appeal is denied.

TRUE & CORRECT COPY

ATTEST: DEC 29,2000
"s/Shirley J. Phipps"
Shirley J. Phipps
Appellate Clerk

"Appendix C"

LIBC-471 (REV. 10-87) Bureau Claim No. 900728

Commonwealth of Pennsylvania
Department of Labor and Industry
Bureau of Workers' Compensation
1171 South Cameron Street, Room 103
Harrisburg, Pa. 17104

(610) 436-3595

202-40-9053
MOD/SUSP
MONTGOMERY COUNTY

12/08/98
Date of Circulation

Jeffrey D. Reutzel
3505 Bartram Road
Willow Grove, Pa. 19090

vs.

Super Fresh Food Markets
2nd Street Pike
Richboro, Pa. 18954

Crawford & Company
600 Reed Road
P.O. BOX 387
Broomall, Pa. 19008

Thomas O' Brien, ESQ.
1818 Market Street
Suite 2300
Philadelphia, Pa. 19103

Deborah Rocco, ESQ.
1811 Chestnut Street
6th Floor, The Belgravia
Philadelphia, Pa. 19103

"Appendix D"

Hearings:	August 28, 1996	Record made
	January22, 1997	Record made
	June 25, 1997	Record made
	September 17, 1997	Record made
	January 7, 1998	Record made
	May 6, 1998	Record made
	September 9, 1998	Record made
	December 2, 1998	Record made

Claimant's Witnesses & Exhibits

C-1 Fee agreement

Defendant's Witnesses & Exhibits

D-1 Deposition of Dr. Pedro Polakoff
D-2 Deposition of Elizabeth Goddard

Order

AND NOW, this 3rd day of December, 1998, the captioned Petitions are hereby marked WITHDRAWN, based on the request made at the hearing held on December 2, 1998 by Defendant attorney.

The attorney's fees approved in the Supersedeas Order are to continue.

"s/ John W. Liddy".
John W. Liddy, Workers' Compensation Judge